

AG Contract No.: KR04-1502TRN
ADOT ECS File No.: JPA 04-078
Project No.: TEA-CCN-0(007)
Section: Koch Field & Silver Saddle Rd
Project: Multi-use Pathway
TRACS No.: SL531 01C
Budget Source Item No.: Local

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE COUNTY OF COCONINO

THIS AGREEMENT is entered into this date 30 December, 2004, pursuant to Arizona Revised Statutes, § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the COUNTY OF COCONINO, acting by and through its CHAIRPERSON and BOARD OF SUPERVISORS (the "County").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The County is empowered by Arizona Revised Statutes § 11-251 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the County.

3. Congress has authorized appropriations for, but not limited to, twelve eligible categories of transportation enhancement activities.

4. Such Project lies within the boundary of the County and has been selected by the County; the survey of the Project has been completed; and the plans, estimates and specifications have been prepared and as required, submitted to the State and the Federal Highway Administration (FHWA) for its approval.

5. The only interest of the State in the project is in the acquisition of Federal Funds for the use and benefit of the County by reason of federal law and regulations under which funds for the project are authorized to be expended.

6. The County, in order to obtain Federal funds for the design and construction of the project, is willing to provide County funds to match Federal funds in the ratio required or as finally fixed and determined by the County, State and FHWA, including actual construction engineering (CE) and administration costs.

NO. 27287
Filed with the Secretary of State
Date Filed: 12/30/04

Janice K. Brewer
Secretary of State

By: Dicky D. Haenebold

7. The work embraced in this Agreement is for the design, construction and maintenance of an ADA Compliant multi-use pathway along Koch Field Road and Silver Saddle Road, located in the Doney Park Area north of Flagstaff, hereinafter referred to as the "Project". The County will be responsible for design, bidding, construction administration, maintenance, electrical power, water connections and landscape maintenance to the Project.

TRACS No.: SL531 01C

*Total Estimated Design & Construction Cost	\$249,728.00
Federal-aid funds @ 94.3% (capped)	\$204,055.00
County funds @ 5.7% (capped)	\$ 11,631.00
Estimated County Funds @ 100%	<u>\$ 34,042.00</u>
*Total Estimated County Funds	\$ 45,673.00

*(Includes construction, construction engineering administration and incidentals)

THEREFORE, inconsideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State will:

a. Agree to be the County's authorized agent for the Project and submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction and funding. Should costs exceed the maximum Federal funds available, it is understood and agreed that the County will be responsible for any overage.

b. Approve the Project if such project construction funds are available by FHWA for construction of the Project. The State and FHWA hereby designate the County to self-administer the Project.

c. Upon execution of this Agreement, make payments to the County for the direct actual cost of the construction of the Project, plus construction engineering, within (30) thirty-days after receipt and approval of an invoice.

d. Not be obligated to maintain this Project, should the County fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

2. The County will:

a. With the aid and consent of the FHWA and the State using Arizona Procurement Procedures, proceed to advertise for, receive and open bids, subject to the concurrence of the FHWA and the State. Enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions, and Standard Specifications at the lowest bid price.

b. Provide personnel to administer and supervise construction. All construction Project change orders are to be copied to the State. The FHWA will participate in the construction administration cost provided by the County up to 15% of the construction cost. Construction administration costs not participated in by FHWA shall be borne by the County.

c. Consent to any inspections performed by the State, provide records or audit any books of the County in order for the State to assure itself that the monies on the Project have been spent and the Project completed in accordance with the plans and specifications, statutes, rules and regulations of the State and Federal Government.

d. Upon execution of this Agreement, invoice the State for the estimated 94.3% federal aid construction and construction administration costs addressed under this Agreement. The County is entirely responsible for all costs incurred in performing and accomplishing the work as set forth in this Agreement whether covered by federal funding or not.

e. Upon completion of construction, provide for, at its own cost and as an annual item in its budget, perpetual and proper maintenance to the multi-use pathway and all enhancement improvements, including but not limited to:

- Maintaining healthy landscaping
- Operation and cost of irrigation
- Operation and cost of lighting
- Removal and treatment of weeds
- Safe access to pedestrian facilities
- Safe access to bicycle facilities

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project. The County, in regard to the County's relationship with the State only, assumes full responsibility for the design, plans, specifications, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. The County shall require its contractor(s) to name the State and ADOT as an additional insured in the contractor(s) insurance policies. The County shall also require its contractors to name the State and ADOT as an additional indemnitee in the County's contracts with its contractor(s). It is understood and agreed that State's participation is confined to securing Federal aid; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof shall be solely the liability of the County and that, to the extent permitted by law, the County hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance or negligent performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the County, any of its agents, officers and employees, or any of its independent contractors. Cost incurred by the State any of its departments, agencies, officers or employees, shall include in the event of any action, court costs, expenses of litigation or attorneys' fees.

2. The cost of the construction and construction engineering work covered by this Agreement is to be borne by FHWA and County, each in the proportion prescribed or as fixed and determined by the FHWA as stipulated in this Agreement. Therefore, County agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of federal aid received.

3. This Agreement shall remain in full force and effect until completion of the work; provided, however, that any provisions for maintenance, which shall be perpetual, unless assumed by another governmental entity.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this contract

7. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

8. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007
(602)-712-7525

County of Coconino
Public Works Director
5600 E. Commerce
Flagstaff, AZ 86004
(928) 779-6630

9. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

10. Non-Availability of Funds: Every payment obligation of the State and County under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State and County at the end of the period for which the funds are available. No liability shall accrue to the State and County in the event this provision is exercised as a result of termination under this paragraph.

11. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

COUNTY OF COCONINO

By Deborah Hill
DEBORAH HILL
Chairperson

STATE OF ARIZONA
Department of Transportation

By Susan Tellez
SUSAN TELLEZ
Contract Administrator

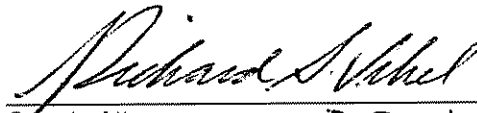
ATTEST

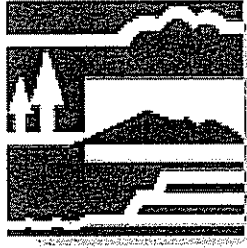
By Sherry J. Cornforth 12-7-04
SHERRY J. CORNFORTH
Deputy Clerk

APPROVAL OF THE COUNTY OF COCONINO

I have reviewed the above referenced proposed Intergovernmental Agreement, between the DEPARTMENT OF TRANSPORTATION, TRANSPORTATION PLANNING DIVISION, and COUNTY OF COCONINO and declare this Agreement to be in proper form and within the powers and authority granted to the County under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 29th day of NOVEMBER, 2004.


County Attorney DEPUTY



COCONINO COUNTY
STATE OF ARIZONA

I, Sherry J. Cornforth, Deputy Clerk of the Coconino County Board of Supervisors, do hereby certify that the following item was approved by the Coconino County Board of Supervisors at a Regular Board Meeting on December 7, 2004.

31. Approve Contract No. KR04-1502TRN an Intergovernmental Agreement between the State of Arizona, Department of Transportation, and Coconino County for a multi-use pathway on Koch Field Road and Silver Saddle Road. **Public Works**

A handwritten signature in black ink, appearing to read "Sherry J. Cornforth", is written over a horizontal line.

Sherry J. Cornforth
Deputy Clerk of the Board
Coconino County Board of Supervisors



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR04-1502TRN (JPA 04-078), an Agreement between public agencies, i. e., The State of Arizona and The County of Coconino, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: December 22, 2004

TERRY GODDARD
Attorney General

A handwritten signature in cursive script that reads "Susan Davis". The signature is written in black ink and is positioned above a horizontal line.

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section